

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION II

CA CR 07-695

LARRY MCELROY

February 13, 2008

APPELLANT

APPEAL FROM THE PULASKI COUNTY
CIRCUIT COURT
[NO. CR-2006-2221]

V.

STATE OF ARKANSAS

HONORABLE CHRIS PIAZZA, CIRCUIT
JUDGE

APPELLEE

AFFIRMED

Appellant, Larry McElroy, was found guilty of battery in the first degree and sentenced to twenty-four months' imprisonment followed by thirty-six months' suspended imposition of sentence. Appellant was also ordered to pay \$10,791.47 in restitution. On appeal, appellant argues that the evidence was insufficient to support his conviction and that the trial court erred in denying his motions to dismiss. We find no error and affirm.

On March 9, 2006, appellant and the victim, Michael Smith, were involved in an altercation outside Chief's Bar and Grill in North Little Rock. Smith sustained lacerations to his stomach, face, and back, and he named appellant as the man who had stabbed him. Appellant was charged with violating Ark. Code Ann. section 5-13-201(a)(1) (Supp. 2007),

which states that a person commits battery in the first degree if, with the purpose of causing serious physical injury to another person, the person causes serious physical injury to any person by means of a deadly weapon. A bench trial was held on February 6, 2007.

At trial, Smith testified that he and his cousin, Jackie Smith, were involved in a disagreement with an individual named Jason over whose turn it was to play pool. Harold Cook, known as “Stick,” also became involved in the dispute. Jackie and Stick engaged in a heated conversation, and then Stick abruptly walked outside. According to Smith, somebody said Stick was going to get a gun. Several individuals, including Smith and Jackie, followed Stick outside, and Smith testified that appellant got in front of him and told him to “get back in the bar before you get f’ed up.” Appellant and Smith grabbed each other by the shirt, and Smith stated that appellant head-butted him across the forehead. Smith fell, appellant swung at him, and Smith felt a burning sensation on his face. Smith admitted that he hit appellant twice and knocked him down. When Smith proceeded to walk towards the bar, however, thinking that the fight was over, appellant hit him in the back (Smith later determined he had been stabbed in the back), and when Smith turned to face him, appellant stabbed him in the stomach. Smith testified that after he realized he had been stabbed, he pointed at appellant and said “that he stabbed me, and all he said [was] no, you knocked my tooth out.” Smith testified that he was transported to the hospital after the stabbing and received inner and outer stitches on his back, eight stitches in his stomach, and butterfly stitches on his face. He testified that all three injuries caused permanent scarring and that he

now wears a goatee to cover the scar on his chin.

Jackie Smith testified to the same chain of events told by Smith, and he also heard Smith identify appellant as the man who had stabbed him immediately after he was stabbed. Delvin Hanlin, another individual at the bar that night, testified that he did not drink but had gone to the bar to play pool, and he had seen appellant walk up to Smith and stab him in the stomach. Hanlin testified that he saw the knife, that it looked like a small buck knife, and that it appeared to be four or five inches long.

Investigator Mike Blaine of the Pulaski County Sheriff's Department testified that he interviewed appellant on April 27th, and appellant stated he had gone outside the bar to keep Smith and Stick from arguing, and Smith had grabbed him. Appellant stated that he head-butted Smith to get away from him, and then Smith hit him, knocking out one of his teeth. Appellant told Blaine that he went back into the bar, cleaned himself up in the bathroom, and then left the scene.

The State rested, and appellant moved to dismiss the charge, arguing that the State had not established the elements necessary for battery in the first degree. Appellant argued that the knife would not fit the definition of a deadly weapon and that Smith's injuries were not serious. His motion was denied.

Appellant then presented the testimony of several witnesses who had been at the bar that night, all of whom testified that they had never known appellant to carry a knife and did not see him stab anyone that night. Appellant also testified and stated that he had gone

outside the bar to prevent Smith from fighting with Stick, and Smith had grabbed his shirt sleeves so that he could not move his hands. Appellant stated that he head-butted Smith to get away from him, and Smith hit him twice and knocked out one of his teeth. Appellant testified that he went to the bathroom to wash the blood out of his mouth, and when he came back outside to leave, Smith was accusing him of the stabbing. Appellant stated that he does not carry a knife and did not have a knife with him that night. Appellant then rested and renewed his motion to dismiss, which the court denied.

On appeal, appellant again challenges the sufficiency of the evidence supporting his conviction. Reviewing a challenge to the sufficiency of the evidence, this court determines whether the verdict was supported by substantial evidence, direct or circumstantial. *Winston v. State*, ___ Ark. ___, ___ S.W.3d ___ (December 13, 2007). Substantial evidence is evidence that is forceful evidence enough to compel a conclusion one way or the other beyond speculation or conjecture. *Id.*

Appellant first argues that the State failed to prove he acted with the intent to inflict a serious physical injury. Pursuant to Ark. Code Ann. section 5-13-201(a)(1), the State was required to prove that appellant acted purposefully, meaning that it was his conscious object to engage in conduct of that nature or to cause such a result. Ark. Code Ann. § 5-2-201(1) (Repl. 2006). According to appellant, because the one witness at trial who saw the knife testified that it was five inches long, including the handle and blade, then the blade itself could not have been more than a two inches long. Appellant argues that because such a small

knife was used, it cannot be inferred that appellant intended for any injury to be life-threatening or a serious physical injury.

While noting that it is questionable whether appellant's motion below can be construed as including this particular argument, we nonetheless reach the merits and conclude his argument is baseless. A person commits battery in the first degree if he or she, with the purpose of causing serious physical injury to another person, causes serious physical injury to any person by means of a deadly weapon. In this case, there was evidence that appellant stabbed Smith several times with a knife, and we have held that a person who deliberately threatens or injures another with a knife creates a substantial danger of death or serious physical injury to another person. *Neely v. State*, 28 Ark. App. 122, 711 S.W.2d 482 (1986). In addition, a presumption exists that a person intends the natural and probable consequences of his acts, and the fact-finder is allowed to draw upon its own common knowledge and experience to infer intent from the circumstances. *Taylor v. State*, 77 Ark. App. 144, 72 S.W.3d 882 (2002). Therefore, we hold there was sufficient evidence that appellant acted with the intent to cause serious physical injury.

Next, appellant asserts there was insufficient evidence that the injuries sustained by Smith were "serious" physical injuries as defined in the statute. Arkansas Code Annotated section 5-1-102(21) (Supp. 2007) defines "serious physical injury" as a "physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member

or organ.” Whether a victim has sustained a serious physical injury is an issue for the factfinder to decide. *Harmon v. State*, 340 Ark. 18, 8 S.W.3d 472 (2000). In this case, Smith testified that he sustained cuts to his back, abdomen, and chin, all of which required stitches. Smith also testified that he has permanent scars from these injuries. In light of this testimony, we hold that the court could reasonably conclude that Smith had suffered serious physical injuries. *See, e.g., Bangs v. State*, 338 Ark. 515, 998 S.W.2d 738 (1999) (holding there was sufficient evidence to conclude that victim who had two lacerations on her scalp, approximately five centimeters in length, which were closed with staples, bruises on her forehead and face, and blunt injuries to her scalp and the back of her head had sustained serious physical injuries).

Appellant also argues that the knife in this case does not qualify as a “deadly weapon” under the statute. Arkansas Code Annotated section 5-1-102(4) (Supp. 2007) defines a “deadly weapon” as “(A) A firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious physical injury; or (B) Anything that in the manner of its use or intended use is capable of causing death or serious physical injury.” Appellant concedes that a “normal” knife falls under this definition as a deadly weapon, but the knife in this case was only a small buck knife and, therefore, cannot be considered a deadly weapon. However, appellant’s assertion that the blade on the knife “had to be less than two inches” is pure speculation, and in any case, it can hardly be doubted that any knife, no matter what the size, would be capable of causing serious physical injury when used to stab

another person. Accordingly, we find that there was substantial evidence to support the conclusion that Smith's injuries were caused by appellant's use of a deadly weapon.

Finally, appellant argues that because there were inconsistencies in the testimony presented at trial, there was insufficient evidence upon which to base a finding of guilty. However, our case law has made clear that the trier of fact is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Navarro v. State*, 371 Ark. 179, ___ S.W.3d ___ (2007). This court is bound by the factfinder's determination on the credibility of witnesses. *Harmon, supra*. Moreover, inconsistent testimony does not render proof insufficient as a matter of law, and one eyewitness's testimony is sufficient to sustain a conviction. *Id.* Therefore, we find there was substantial evidence to support the trial court's finding of guilt, and we affirm the judgment of conviction.

Affirmed.

GLADWIN and ROBBINS, JJ., agree.